In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE A. BARTLETT, APPELLANT,
v.
THE UNITED STATES. } No. 259.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

While holding the office of disbursing clerk of the Treasury Department, at a salary fixed by law at $2,500 per annum, for which he had given bond and taken the oath of office, as required by statute, the Secretary of the Treasury, on the date named below, addressed to appellant the following communication:

OFFICE OF THE SECRETARY,
Washington, D. C., November 27, 1891.

GEORGE A. BARTLETT,
Disbursing Clerk, Treasury Department,
Washington, D. C.

SIR: You are hereby appointed disbursing agent for such funds as may be advanced to you from time to time on account of the appropriation for post-office, Washington, D. C.

You will be entitled to such compensation for the services named as is provided by law, and the same rate of compensation will be allowed on all amounts disbursed by you since October 15, 1891, on account of the appropriation named.

Disbursements will be made upon vouchers issued and properly certified by Thomas C. Steward, superintendent of construction, post-office, Washington, D. C.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

Pursuant to the above designation, appellant disbursed the moneys appropriated by Congress for the erection of the post-office at Washington, D. C., during a period beginning October 15, 1891, and ending April 4, 1900, the aggregate of such disbursements amounting to $2,450,710.10.

For the performance of these duties no additional bond or oath of office was required.

Upon the completion thereof a demand was presented to the proper accounting officers of the Treasury Department by appellant for an allowance of $9,190.20 as commissions at the rate of three-eighths of 1 per cent on the total amount thus disbursed, which was disallowed by the Auditor, and upon appeal was rejected by the Comptroller of the Treasury in an opinion dated June 30, 1902. (8 Decisions, Comp. Treasury, 901.) Thereupon appellant filed a petition in the Court of Claims seeking to recover the sum of

$9,190.20, as claimed, on account of the funds so disbursed upon the ground that the letter of the Secretary of the Treasury, of November 27, 1891, constituted an appointment under the authority of section 3658, Revised Statutes of the United States, and that by reason thereof he was entitled to the compensation therein provided.

The Court of Claims, in an opinion by Peelle, J., held that the appointment, employment, or designation of appellant by the Secretary did not come within the section named; that the other provisions of the statutes relating thereto did not authorize the payment of compensation for such service, and that the duty assigned being identical with appellant's other duties as disbursing clerk of the Department he was not entitled to recover in the absence of special legislation to that effect, and dismissed the petition. Nott, C. J., in a separate opinion, concurred in the result. This appeal is taken from the judgment of dismissal.

ARGUMENT.

The sole question raised by this appeal is: What authority had the Secretary of the Treasury to appoint the claimant to the duties specified in the letter of November 27, 1891, and to what compensation is he entitled for the performance thereof?

In the brief of counsel for appellant, it is contended that the letter of appointment, the acceptance and performance of the duties specified, constitute a contract between appellant and the United States enforceable in the courts, for which no statutory authority was

necessary, the employment being within the power of the Secretary of the Treasury, the head of an executive department, as an incident of general sovereignty, and a number of decisions to sustain this contention *are cited*. This question, however, does not arise in the case. A reference to the statutes hereinafter cited will show that Congress has adopted a most comprehensive system for the disbursement of appropriations for the erection of all public buildings, including the compensation of public officers appointed or designated for such service. The court therefore is not concerned in this case with the extent of the power vested in the Secretary of the Treasury, Congress by its enactments, having removed this subject from such consideration.

The provisions of the Revised Statutes relating to the appointment, designation, and compensation of officers for the disbursement of appropriations for the erection of public buildings, and which, it is insisted by the United States, govern the case, are as follows:

> SEC. 3657. The collectors of customs in the several collection districts are required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals; with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just.
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> SEC. 3658. Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for

> the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just.
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> SEC 255. The Secretary of the Treasury may designate any officer of the United States, who has given bonds for the faithful performance of his duties, to be disbursing agent for the payment of all moneys appropriated for the construction of public buildings authorized by law within the district of such officer.

The act of August 7, 1882 (22 Stat., 306), provides:

> And any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed.

The appellant contends that statutory authority for this employment is contained in section 3658, and that he is entitled to the compensation claimed for the reason that there was no collector of customs at the city of Washington, the place of the location of the public work.

But it will be observed that section 3657 requires collectors of customs to act as disbursing agents for erection of the public buildings therein named, and that section 3658 authorizes the appointment of a disbursing agent by the Secretary only "*where there is no collector at the place of location of any public work specified in the*

preceding section." It is manifest, therefore, that if there was a collector of customs provided "at the place of location" of the Washington City Post Office the appointment of Mr. Bartlett was not authorized by section 3658, and that he is not entitled to compensation thereunder.

The Revised Statutes provide:

> SEC. 2550. There shall be in the District of Columbia one collection district, as follows:
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> The district of Georgetown; to comprise all the waters and shores of the Potomac River within the State of Maryland and the District of Columbia from Pomonkey Creek to the head of the navigable waters of that river; in which Georgetown shall be the port of entry.
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> SEC. 2551. There shall be in the district of Georgetown a collector.

The post-office building at the city of Washington is situated in the District of Columbia, for which one collection district is provided, viz, "the district of Georgetown," which clearly embraces the "place of location" of said building. The fact that at the time appellant assumed the disbursements of the funds there were two separate municipalities in the collection district, one of which was subsequently abolished and its territory made a part of the other, necessitating a change in the name of the port of entry (28 Stats., p. 650), does not affect the question. They were both included within the specified boundaries of the district, which boundaries are described in the same manner as the collection districts in several of the States embrac-

ing different municipalities. (Sections 2546–2548, Rev. Stats., U. S.)

It being clear that the appellant could not have been appointed for the purpose named in the letter of November 27, 1891, under section 3658 of the Revised Statutes, as alleged in the petition and in the brief, it follows that his appointment was made by the Secretary under section 255 of the Revised Statutes, which carries with it no compensation additional to his regular salary, for services performed in accordance therewith. He can not avail himself of the provisions of the act of August 7, 1882 (22 Stats., p. 306), because the disbursements he made were for a building located in the city of Washington which by express terms is excluded from the operation of the act (*Bartlett* v. *United States*, 25 C. Cls. R., 389), and there is no other provision of law authorizing payment to him for such services.

Indeed, the policy of Congress upon the allowance of additional pay or compensation in any form whatever to public officers whose salaries are fixed by law has been most carefully expressed to the contrary in the following sections of the Revised Statutes:

> SEC. 1760. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary in any office when the office is not authorized by some previously existing law unless such office is subsequently sanctioned by law.
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> SEC. 1763. No person who holds an office the salary or annual compensation attached to

which amounts to the sum of two thousand five hundred dollars shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

SEC. 1764. No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law.

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

This court fully considered the legislation embraced in the last three sections in the case of *United States* v. *Saunders* (120 U. S., pp. 126–129) and stated its opinion to be that, taking these sections together, the purpose of this legislation was to prevent a person holding an office or appointment for which the law provides a definite compensation, by way of salary or otherwise, which is intended to cover all the services which as such officer he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him

either by act of Congress or by order of the head of a Department, or in any other manner, added to or connected with the regular duties of the place which he holds.

This construction applies to appellant's services in this case. The act of Congress making appropriations for the construction of this post-office required the Secretary of the Treasury to disburse the money and did not contain any provision whatever for payment of compensation for such service. (26 Stat. L., 174, 413, 414; 27 Stat. L., 351, 573; 28 Stat. L., 373, 913; 29 Stat. L., 415; 30 Stat. L., 13.)

No office or position of disbursing agent was created by those acts. In the execution thereof and in conformity with the duty thus conferred, the Secretary of the Treasury appointed the disbursing clerk of the Treasury Department to make these disbursements.

At the time these services were rendered, for which extra pay is claimed, the appellant was an officer in the public service, and, as such, was receiving pay or salary as fixed by law. He was the proper officer and the one naturally to be selected for this duty, which, as stated by the court below, "were not only germane to his regular duties as disbursing clerk, but were identical therewith, and hence [they] can not be considered as two distinct offices or employments having different duties to perform." (Rec., p. 6.)

Appellant performed the additional duties thus required under his appointment to a single office, and there is no law authorizing compensation for such

services and no appropriation which "explicitly states that it is for such additional pay, extra allowance, or compensation." The letter of the Secretary to appellant, stating that he would be entitled to "such compensation for the services named as is provided by law," conferred no additional rights in the absence of special legislation.

It is respectfully insisted that the judgment of the Court of Claims dismissing the petition herein should be affirmed.

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Special Attorney.

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